

1 Andrew C. Schwartz (State Bar No. 64578)
Larry E. Cook (State Bar No. 122776)
2 **CASPER, MEADOWS, SCHWARTZ & COOK**
A Professional Corporation
3 California Plaza
2121 North California Blvd., Suite 1020
4 Walnut Creek, California 94596
Telephone: (925) 947-1147
5 Facsimile: (925) 947-1131

6 Attorneys for Plaintiff
SHAWN DAY
7

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 SHAWN DAY, individually and as
successor in interest to the Estate of
12 Steffen Matthew Day,

13 Plaintiff,

14 vs.

15 COUNTY OF CONTRA COSTA, JOSHUA
PATZER, WARREN RUPF, and Does 1
16 through 50, et al.,

17 Defendants.
18

Case No. C07-4335-PJH

**DECLARATION OF THOM SEATON IN
RESPONSE TO DEFENDANTS'
OBJECTIONS TO EVIDENCE**

Date: September 10, 2008
Time: 9:00 a.m.
Judge: Honorable Phyllis J. Hamilton
19 Dept: Courtroom 3, 17th Floor (SF)

19 I, THOM SEATON, declare as follows:

20 1. I am an attorney at law duly licensed to practice law before all the courts
21 of the State of California and I am a member of the firm Casper, Meadows, Schwartz
22 & Cook, attorneys of record for plaintiffs in this action.

23 2. Attached hereto as **Exhibit 1** is a true and correct copy of the
24 Zandonella prepared transcript of the statements of Deputy Patzer made to
25 investigators following the shooting.

26 3. Attached hereto as **Exhibit 2** is a true and correct copy of defendants'
27 transcript of the statement of Deputy Patzer made to investigators following the
28 shooting.

1 I declare under the penalty of perjury under the laws of the State of California
2 and the United States that the foregoing is true and correct and that if called upon to
3 do so, would testify the foregoing facts in Court.

4 Executed at Walnut Creek, California, on September 3, 2008.

5
6 

7 Thom Seaton
8 **CASPER, MEADOWS, SCHWARTZ & COOK**

PROOF OF SERVICE

RE: Shawn Day, et al. v. County of Contra Costa, et al.
United States District Court Case No. C07-4335-PJH

I am a citizen of the United States and am employed in the County of Contra Costa, State of California. I am over eighteen (18) years of age and not a party to the above-entitled action. My business address is 2121 North California Blvd., Suite 1020, Walnut Creek, CA 94596. On the date below, I served the following documents in the manner indicated on the below-named parties and/or counsel of record:

DECLARATION OF THOM SEATON IN RESPONSE TO DEFENDANTS' OBJECTION TO EVIDENCE

- ☐ U.S. MAIL, with First Class postage prepaid and deposited in sealed envelopes at Walnut Creek, California.
- ☐ ELECTRONICALLY, I caused said documents to be transmitted using ECF as specified by General Order No. 45 to the following parties.
- ☐ FACSIMILE TRANSMISSION from (925) 947-1131 during normal business hours, complete and without error on the date indicated below, as evidenced by the report issued by the transmitting facsimile machine.
- ☐ Hand-Delivery Via Courier
- ☒ Other: OVERNIGHT DELIVERY. On the date indicated below, I placed a true and correct copy of the aforementioned document(s) in a sealed envelope and/or package designated by **Federal Express Priority Overnight**, individually addressed to the parties indicated below, with fees fully prepaid, and caused each such envelope and/or package to be deposited for pick-up on the same day by an authorized representative of **Federal Express** at Walnut Creek, California, in the ordinary course of business.

For Defendants

James V. Fitzgerald, III
McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer LLP
1211 Newell Avenue
Walnut Creek, CA 94596
Tel: (925) 939-5330
Fax: (925) 939-0203

I declare under penalty of perjury under the laws of the State of California, and the United States of America, that the foregoing is true and correct and that I am readily familiar with this firm's practice for collection and processing of documents for mailing with the U.S. Postal Service.

Dated: September 3, 2008

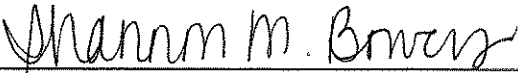

SHANNON M. BOWERS

EXHIBIT 1

COPY

REPORTER'S TRANSCRIPT OF AUDIORECORDED PROCEEDINGS
INTERVIEW
OF

DEPUTY JOSHUA PATZER

RE: DAY V. CONTRA COSTA COUNTY
ADMINISTRATIVE REVIEW 2006-30

AUGUST 16, 2006

Transcribed by: JOHN A. ZANDONELLA, CSR No. C-795

1 DEP. PATZER: No.

2 INSP. MULLIGAN: Any military experience?

3 DEP. PATZER: I was in the marine corps for four
4 years active and four years reserve.

5 INSP. MULLIGAN: And today -- the incident happened
6 about 1:45 in the morning, what time did you go in to
7 work last night?

8 DEP. PATZER: I got there about 9:20 for lineup at
9 9:30.

10 INSP. MULLIGAN: And when was the last time you had
11 anything to sleep -- had been to sleep?

12 DEP. PATZER: I left work, dayshift, we got off
13 about 3:10, went to my mother's house in Vallejo and
14 slept till, about 8:45 the alarm went off.

15 INSP. MULLIGAN: And then you went to work. What
16 kind of uniform were you wearing?

17 DEP. PATZER: Full sheriff's uniform, short sleeve
18 shirt, khaki, badge, nameplate, full duty leather, black
19 boots and tan pants.

20 INSP. MULLIGAN: And then your partner tonight, you
21 said was Officer --

22 DEP. PATZER: Deputy Boehrер.

23 INSP. MULLIGAN: -- Boehrер. How long have you
24 guys known each other?

25 DEP. PATZER: We were in the academy together.

1 DEP. PATZER: I fall down to my knees. And he kind
2 of falls not all the way down but he's like half the
3 size he is now, kind of --

4 INSP. MULLIGAN: Right.

5 DEP. PATZER: -- scrunched. I lost my light. And
6 we're kind of three feet inside the gate now when we're
7 all said and done. I reach down with my left hand to
8 try to pick up my light 'cause it's pitch black. I
9 can't see my hand.

10 INSP. MULLIGAN: And the suspect at that time, you
11 said he was partially down. Does it sound like he's
12 crouching, or is he just responding to the --

13 DEP. PATZER: Responding to the fall, trying to
14 catch himself. As I'm reaching for the flashlight and
15 holding his shirt, he starts to stand up. So I start to
16 come up, and next thing I know I got hit and my hand
17 kind of pulled him further in front of me.

18 INSP. MULLIGAN: And what did you get hit with?

19 DEP. PATZER: I can't, I didn't see what it was.

20 INSP. MULLIGAN: Where did you get hit?

21 DEP. PATZER: In the head area.

22 DETECTIVE: Did it feel like a fist?

23 DEP. PATZER: It felt like a solid box or punch,
24 but I can't be sure 'cause I couldn't see anything. And
25 I was looking for a light and still trying to hold him.

1 He had put me back on my heels.

2 INSP. MULLIGAN: And you get hit on -- you're
3 pointing to the left side of your head?

4 DEP. PATZER: Yeah.

5 INSP. MULLIGAN: And you think it was the suspect
6 who hit you, do you think you might have banged your
7 head on the --

8 DEP. PATZER: No, I think he hit me, 'cause next
9 thing I knew when I let go and then I went to grab him
10 again, he was facing me at that point and pushing me
11 back.

12 INSP. MULLIGAN: So he hits you in the head. You
13 can feel obviously, it sounds like it's a solid fist.
14 And now he's facing you?

15 DEP. PATZER: Yeah. Well, I grabbed the shirt,
16 thinking he might be -- after he hit me, I thought he
17 would run. So trying to prevent him from fleeing, I
18 thought I was grabbing the back of him. Once I grabbed
19 on to him, I could feel his arms facing me, swinging at
20 me. So I brought my shoulders up.

21 DETECTIVE: So he's still swinging punches at you.

22 DEP. PATZER: Yeah, and pushing me back into the
23 garbage pile of stuff.

24 DETECTIVE: Is he pretty strong?

25 DEP. PATZER: Yeah, he felt like -- as we were

1 INSP. MULLIGAN: So you guys are still on your
2 feet, though.

3 DEP. PATZER: I'm starting to lose my footing on
4 the rubble and the plastic stuff back there.

5 I stand up and we're face to face again. And at
6 this point he comes at me again in a fighting stance,
7 keeps aggressing towards me. So I go to push him back
8 and I slip again. And my arm goes down into this pile
9 of rubble.

10 And finally I get my footing enough to where I just
11 push him with all I have to get him away from me. I
12 don't grab him. I just make a fist and put my left arm
13 up right to his midsection, push him away.

14 And as I do that, I start to stand up, take a step
15 back, put my hand on my pistol. And that's when
16 something hits me from behind. And he grabs, comes at
17 me again. I pull out my pistol. I grab to hold onto
18 him and I fire one round.

19 And then I can feel that there's no pressure on my
20 hand anymore. He's basically gone.

21 I can see where the, my illumination from my
22 flashlight. I moved the plastic bag that's on it and
23 grab it, try to see who's behind me. And there's an air
24 conditioner in the window, and I'm assuming that's what
25 I hit.

1 too.

2 DEP. PATZER: I couldn't see anything. My feet
3 never had a firm setting on anything back there.

4 When I finally did get the light, I had to move a
5 bike and like eight bags just to let people through the
6 gate that we fell through.

7 DETECTIVE: Had all kinds of garbage and junk out
8 there?

9 DEP. PATZER: I know I moved a slide and a bike and
10 a bunch of garbage bags.

11 DETECTIVE: Okay.

12 DEP. PATZER: Yeah.

13 INSP. MULLIGAN: Now, when the shooting -- let's
14 just try to freeze frame that -- are you on your,
15 standing up, or are you actually down so you're in a
16 crouching position? What would be the best way to
17 describe that?

18 DEP. PATZER: I was crouching. I felt something
19 from behind so I ducked down thinking if they're gonna
20 hit me they're gonna swing high, 'cause they can't see
21 either.

22 And I pulled out my weapon and I was crouched like
23 this. And he came back at me, and I fired one shot.

24 DETECTIVE: Crouched, were you still on one knee or
25 just bent down?

1 DEP. PATZER: Yeah. No, he -- I pulled my gun out
2 to retention and held it in tight, 'cause the last I
3 felt he wasn't far enough away from me to put my arms
4 out, 'cause I'd still have to push him away.

5 As soon as I got my gun here, he comes at me again
6 and I start to lose balance again. And I fire one shot
7 and then the pressure's off my arm.

8 DETECTIVE: So he's driving you backwards as the
9 round goes off?

10 DEP. PATZER: As I go off, he's still pushing me
11 back. I'm not like falling over tilting, but I'm having
12 to walk backwards.

13 Then I fire one round basically point shooting at
14 center silhouette, whatever I have and he -- there's no
15 pressure there.

16 I look around to see who's behind me. I can't see
17 anything but I see the light.

18 INSP. MULLIGAN: Okay.

19 DEP. PATZER: So I pick the garbage bag up. I can
20 see, grab the light. I see the air conditioning. And
21 then I see him on the ground.

22 INSP. MULLIGAN: And the lighting there, except for
23 your flashlight, so -- we're assuming that when you're
24 going towards the suspect, you're going in a northbound
25 direction pretty much, would that be safe to say? And

1 Sheriff's Office, stop resisting.

2 INSP. MULLIGAN: Okay. And did you do that during
3 this one, do you recall?

4 DEP. PATZER: Yes.

5 INSP. MULLIGAN: Okay. Any idea how many times you
6 told him that?

7 DEP. PATZER: I don't know exactly. I'd say about
8 five.

9 INSP. MULLIGAN: Okay. And he continued to advance
10 on you and continued to struggle?

11 DEP. PATZER: Yes.

12 INSP. MULLIGAN: And the way you described your
13 encounter with him, it sounds like he probably punched
14 you in the head once. Were there any other blows that
15 you're aware of, or was it pretty much him pushing you
16 away, trying to advance on you?

17 DEP. PATZER: There was no other punches that were
18 quite as solid, straight --

19 INSP. MULLIGAN: Right.

20 DEP. PATZER: -- hits. The rest were kind of like
21 glances. He was just swinging at me, and I was able to
22 duck and move, so they were just like glancing blows. I
23 could feel his arms skipping by my head. But they, none
24 of them connected like the first one.

25 INSP. MULLIGAN: And then immediately after the

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF CONTRA COSTA)
4

5 I, JOHN A. ZANDONELLA, do hereby certify:

6 That I am a Certified Shorthand Reporter of the
7 State of California, License No. C-795;

8 That the foregoing pages, 2 through 42, are a true
9 and correct transcription of the audiorecorded
10 proceedings furnished to me by the Law Offices of
11 Casper, Meadows & Schwartz, except where noted
12 "unintelligible" or "inaudible."

13 I further certify that I am not interested in the
14 outcome of said matter nor connected with or related to
15 any of the parties of said matter or to their respective
16 counsel.

17 Dated this 18th day of April, 2008, at Concord,
18 California.

19
20 
21 JOHN A. ZANDONELLA, CSR No. C-795
22
23
24
25

EXHIBIT 2

INTERVIEW WITH DEP. JOSHUA PATZER
Interviewer: S.I. Paul Mulligan
08-17-06/9:17 am CT
Case # 06-6425
Page 4

135 car. I gave him a brief synopsis of what happened and that nobody was
136 outstanding and I fired one shot. And he stand me and talk to nobody and
137 then uh Officer (Glazer) with the Pittsburgh PD brought me back here,
138 sequestered me, and I talked to my attorney and gave blood and urine and now
139 my interview.

140
141 Q: Okay. Thank you. Let's uh just go back and start at the very beginning and
142 that's just go through. First of all how long have you been on the department?

143
144 A: Six years.

145
146 Q: And on the six years how long in patrol? How long in detentions uh?

147
148 A: Well I have approximately on patrol and the rest – uh one year in court
149 security and then the rest of the time would be in the detention.

150
151 Q: So maybe a year and a half in detention or something like that?

152
153 A: Well yeah court security time counted and yeah.

154
155 Q: Okay. And then before coming to work for the sheriff's department did you
156 ever (unintelligible) law enforcement agencies?

157
158 A: No.

159
160 Q: Any military experience?

161
162 A: I was in the Marine Corps for four years active and four years reserve.

163
164 Q: And today the incident happened about 1:45 in the morning. What time did
165 you go into work last night?

166
167 A: Um I got there about 9:20 for line up at 9:30.

168
169 Q: And when was the last time you had anything to sleep – or went to sleep?

170
171 A: I left work uh day shift, we got out about 3:10, went to my mother's house in
172 (Valejo) and slept till about 8:45 the alarm went off.

173
174 Q: And then you went to work. What kind of uniform were you wearing?

175
176 A: Uh full sheriff's uniform, short sleeved shirt, khaki, badge, nameplate, full
177 duty leather, uh black boots and tan pants.

178
179 Q: And then your partner tonight you said was Officer uh?

INTERVIEW WITH DEP. JOSHUA PATZER

Interviewer: S.I. Paul Mulligan

08-17-06/9:17 am CT

Case # 06-6425

Page 9

358 A: And I've got a fistful of his shirt in my right hand and that's when the gate or
359 the fence opens away from the house and he starts to fall and I fall to my knee
360 and drop my light.

361
362 Q: (Unintelligible) what you're saying so, he-so the gate opens, apparently he's
363 unaware it's a gate too -- the gate falls-falls open. You fall to the ground?

364
365 A: I fall down to my knees and he kind of falls, not all the way down but he's
366 like half the size he is now.

367
368 Q: Right.

369
370 A: Kind of scrunched him and I lost my light and we're kind of three feet inside
371 the gate now when we're all said and done. I reached down with my left hand
372 to try and pick up my light, because it's pitch black I can't see my hand.

373
374 Q: And the suspect at that time you said he was partially down does it sound like
375 he's crouching or is he just responding to the?

376
377 A: Responding to the fall, trying to catch himself. And as I'm reaching for the
378 flashlight and holding his shirt um he starts to stand up, so I start to come up
379 and then next thing you know I got hit. And my hand kind of pulled further in
380 front of me.

381
382 Q: And what did you get hit with?

383
384 A: I can't -- I didn't see what it was?

385
386 Q: Where'd you get hit?

387
388 A: In the head area?

389
390 Q1: Did it feel like a fist?

391
392 A: It felt like a solid boxer's punch but I can't be certain as I couldn't see
393 anything and I was looking for a light and still trying to hold him and. It put
394 me back on my heels and.

395
396 Q: And you got hit -- you're pointing to the left side of your head.

397
398 A: Yeah.

399
400 Q: And you think it was the suspect that hit you? You think you might have
401 banged your head on the ...
402

0000629

403 A: No I think he hit me because he's -- next thing I knew when I let go and I went
404 to grab him again he was facing at me at that point and pushing me back.
405
406 Q: So hit you in the head. You can feel obviously that it sounds like it's a solid
407 fist. Now he's facing you?
408
409 A: Yeah well I-I grabbed the shirt thinking he might be after he-he hit me I
410 thought he would run so trying to prevent him from fleeing I thought I was
411 grabbing the back of him and once I grabbed on to him, I could feel his arms,
412 facing me swinging at me, so I brought my shoulders up.
413
414 Q1: So he's still swinging punches at you?
415
416 A: Yeah. And pushed me back into the garbage pile of stuff.
417
418 Q: Is he pretty strong?
419
420 A: Yeah he felt it. As we were running he appeared to be a tall lengthy guy
421 though. But then we started wrestling and he keeps pushing me back on my
422 heels, he was overpowering me.
423
424 Q: When he's doing -- so is he punching you or pushing you or?
425
426 A: Well I had him and I could feel him swinging and hitting me so I lifted my
427 head and I could feel him hitting the sides of me and stuff and I slipped back
428 up.
429
430 Q: When you -- was it safe to say that you put your arms to try to?
431
432 A: Yeah and I put my head down.
433
434 Q3: Got a hold of his shirt?
435
436 A: Right, like I just grabbed his shirt.
437
438 Q3: Right.
439
440 A: Thinking I was gonna grab the back of his shoulders or ...
441
442 Q3: Right.
443
444 A: Then I had his chest.
445
446 Q3: His chest.
447

INTERVIEW WITH DEP. JOSHUA PATZER

Interviewer: S.I. Paul Mulligan

08-17-06/9:17 am CT

Case # 06-6425

Page 11

448 A: And I'm slipping backwards so I kind of let it go again and I pushed him away
449 a little bit and this time we're kind of at an angle and when I push him away
450 —

451
452 Q: So you guys are still on your feet though?

453
454 A: I'm starting to lose my footing on the rubble and the plastic stuff back there.
455 And I stand up and we're face to face again and at this point he comes at me
456 again in fighting stance. Keeps aggressing towards me so I go to push him
457 back and I slip again and my arm goes down into this pile of rubble. And
458 finally I get my footing enough to where I just push him with all I have to get
459 him away from me. I don't grab him. I just make a fist and put my left arm
460 up and right into his midsection to push him away. And as I do that, I start to
461 stand up, take a step back, put my hand on my pistol and that's when
462 something hits me from behind. And he grabs — comes at me again, I pull out
463 my pistol, I grab it, hold on it, and I fire one around and then I can feel that
464 there's no pressure on my hand anymore. He's basically gone I can see where
465 the light the illumination from my flashlight. I move the plastic bag it's
466 under, grab it. Try to see who's behind me and there's an air conditioner in
467 the window. I'm assuming that's what I hit. And then I shine back to him
468 and he's on the ground trying to get up.

469
470 Q1: Where did it hit you? In the head? In the back?

471
472 A: In the middle of my vest in the back as if, like just one big swing.

473
474 Q: You mentioned when they, when you first got hit last time you thought it was
475 possibly too one of the guys that was (unintelligible) in the car.

476
477 A: Yeah I — I thought it might be.

478
479 Q: Starting to uh attack you.

480
481 A: Because I didn't hear (Vorhower) coming. I didn't hear any radio traffic and I
482 was wearing an earpiece.

483
484 Q: So you're thinking uh when you got hit that that's what it was?

485
486 A: Something either ...

487
488 Q3: Ambushed.

489
490 A: Ambushed somebody from the car ...

491
492 Q: Thought that someone ...

0000631

INTERVIEW WITH DEP. JOSHUA PATZER

Interviewer: S.I. Paul Mulligan

08-17-06/9:17 am CT

Case # 06-6425

Page 12

493
494 A: (Vorhower) stopped one person.
495
496 Q: Right.
497
498 A: And the other guy got through. Or he did know somebody at this house and
499 they came out to help him.
500
501 Q: And started attacking you also?
502
503 A: Right. So then it was a two on one and I couldn't keep my footing or, like I
504 said this guy already pushed me back twice and I pushed him away not
505 holding on to him, he could have ran. And he kept coming at me, when I lost
506 my hand in the rubble and pulled it back out.
507
508 Q3: Now he got -- when the first uh -- first hit did it -- did you lose consciousness at
509 all or did it -- you know ...
510
511 A: No.
512
513 Q3: You ever get hit and you kind of get a flash and you lose your bearings and
514 everything?
515
516 A: Well I-I-I kind of lost, when you lose your footing your equilibrium's kind of
517 off. I don't know if it was cause I was slipping or from the punch but...
518
519 Q3: It was dark out too.
520
521 A: I couldn't see anything. My feet never had a firm setting on anything back
522 there. When I finally did get the light I had to move a bike and like eight bags
523 just to let people through the gate that we fell through.
524
525 Q: Yeah there's all kinds of garbage and junk out there.
526
527 A: Then I-I know I moved a slide and a bike and a bunch of garbage bags.
528
529 Q: Okay.
530
531 A: Yeah.
532
533 Q: Now when the shooting, cause let's just try to freeze frame that. Are you on
534 your -- standing up or your actually down still you're in a crouching position,
535 what would be the best way to describe that?
536

0000632

537 A: I was uh crouching. I felt something from behind so I duck down thinking if
538 they were going to hit me they were going to swing higher because they can't
539 see either. And I pulled out my weapon and I – I was crouched like this and
540 he came back at me and I fired one shot.

541
542 Q1: Crouched were you still on one knee or were you just bent down?

543
544 A: I was just bent down at that point, I had never made it straight back all the
545 way up.

546
547 Q1: So okay you're just (unintelligible).

548
549 A: Right then I – and then I as – as I fired and I thought I had my foot planted
550 properly it slipped out from – so I took a few steps again, got my f-footing and
551 that's when I could see uh the faint light. And as soon as I moved the bags off
552 the light and picked it up it illuminated it to where I could see.

553
554 Q: Did he ever say anything at all during this encounter?

555
556 A: Uh no, I have no recollection of him saying anything.

557
558 Q: What happens next then? Do you remember putting anything on the radio?

559
560 A: Um when he's down I see after I tell him to – because he tries to get up, I tell
561 him stay down, sheriff's office don't move. And as I see him roll over
562 towards the house I can see the blood on his shirt and on the ground. So that's
563 when I put on the radio uh I need code three fire and ambulance, shots fired,
564 uh suspect down. And I could hear peop-hear the sirens and stuff coming.
565 Um then I hear uh (Vorhower) said he has somebody down the street still. I
566 can I tell him that I can see that I'm across from 25 because that's the only
567 number I can see down the road. And uh then when Pittsburgh started going
568 by I uh turned my light on and off real quick to get their attention. (Pat
569 O'Brien) and Pittsburgh PD came in the back. And then that's when I went
570 and found the 26 was where I was at, put that out on the air, and then —
571 excuse me — called the sergeant and everybody else. And they were asking if
572 fire could come in and I was, "Yeah send fire in now." And that's when uh
573 Sergeant Clark showed up, went in the back and took me uh to the police car.

574
575 Q: Then when the shooting occurred what do you think the distance was between
576 you and the suspect?

577
578 A: I could feel him with this hand still so, you ...

579
580 Q: He's still aggressing you?

581

INTERVIEW WITH DEP. JOSHUA PATZER

Interviewer: S.I. Paul Mulligan

08-17-06/9:17 am CT

Case # 06-6425

Page 14

582 A: Yeah he-he was still coming at me.

583

584 Q: When he's coming at you do you have, when you pull your gun out I mean is
585 it instantaneous that he's still coming at you and dancing at you that you
586 shoot? Or you - do you have an opportunity to tell him, you know, stop or I'll
587 shoot.

588

589 A: Yeah no he - I-I-I pulled my gun out to retention and held it in tight because
590 last I felt he wasn't far enough away from me to put my arms out because I
591 still had to push him away again. As soon as I got my gun he-he comes at me
592 again and I start to lose balance again, and I fire one shot, and then the
593 pressures off my arm.

594

595 Q: So he's driving you backwards as the round goes off?

596

597 A: As I go off he's still pushing me-me back. I'm not falling over tilting but I'm
598 having to walk backwards. And then I fire one round basically point shooting
599 at center silhouette whatever I have and he there's no pressure there. I look
600 around to see who was behind me and I can't see anything but I see the light.

601

602 Q: Okay.

603

604 A: So I picked the garbage back up. I can see grab the light, I see the air
605 conditioning and then I see him on the ground.

606

607 Q: And the lighting there, except for your flashlight, so we're assuming that
608 when you're going towards the suspect you're going in the northbound
609 direction pretty much. Would that be safe to say?

610

611 A: Uh.

612

613 Q: And he's coming back at you in a southbound direction?

614

615 A: Yeah.

616

617 Q: Where is the flashlight beam?

618

619 A: I couldn't see any flashlight until I looked back to where it was and I could
620 barely - it looked like a faint candle underneath that black bags. As soon as I
621 moved the black bags out of the way, then it illuminated, I grabbed it to see
622 who was behind me and where he went and that's when I saw him.

623

624 Q1: No porch lights nothing like that?

625

626 A: No.

0000634

INTERVIEW WITH DEP. JOSHUA PATZER

Interviewer: S.I. Paul Mulligan

08-17-06/9:17 am CT

Case # 06-6425

Page 16

672 Q: And when he's advancing at you I mean during this time you said you said
673 words to the effect of, "Sheriff's office stop," or "Sheriff's office."

674
675 A: No um when I'm – when I'm in foot pursuit of somebody.

676
677 Q: Right.

678
679 A: Is when I yell "Sheriff's office stop." Um when I catch them if they resist I
680 yell, "Sheriff's office stop resisting," to let them know what I'm doing and
681 what I want them to do.

682
683 Q: Right.

684
685 A: If I just grab them and I'm fighting and I have to go to court he could say I –
686 he didn't know who it was.

687
688 Q: Right.

689
690 A: So I make it a habit to tell them, "Sheriff's office stop resisting."

691
692 Q: Right okay. And did you during this one do you recall?

693
694 A: Yes.

695
696 Q: Okay any idea how many times you told him that?

697
698 A: Um I don't know exactly. I'd say about five.

699
700 Q: Okay. And then he continued to advance on you and continued to struggle?

701
702 A: Yes.

703
704 Q: And the way you described your encounter with him, it sounds like he
705 probably punched you in the head once. Were there any other blows that you
706 were aware of was it pretty much him pushing you away or trying to advance
707 on you?

708
709 A: Um there's no other punches that were quite as solid, straight hits.

710
711 Q: Right.

712
713 A: The rest were kind of like glances he was just swinging at me and I was able
714 to duck and move so they were just like glancing blows I could feel his arms
715 skipping by my head but they – none of them connected like the first one.

716

0000636